

ASSEMBLY BILL

No. 29

Introduced by Assembly Member Charles Calderon

September 5, 2008

An act to amend Section 17942 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 29, as introduced, Charles Calderon. Income taxes: limited liability companies: fees.

The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay, annually to this state, a fee equal to specified amounts based upon total income from all sources attributable to this state. The fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year and penalties and interest are payable for violations, as specified.

This bill would require that the fee be estimated and paid no later than the 15th day of the 6th month of the taxable year, and would impose an additional penalty for underpayment, as provided.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 10, 2008, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17942 of the Revenue and Taxation Code
2 is amended to read:

1 17942. (a) In addition to the tax imposed under Section 17941,
2 every limited liability company subject to tax under Section 17941
3 shall pay annually to this state a fee equal to:

4 (1) Nine hundred dollars (\$900), if the total income from all
5 sources derived from or attributable to this state for the taxable
6 year is two hundred fifty thousand dollars (\$250,000) or more, but
7 less than five hundred thousand dollars (\$500,000).

8 (2) Two thousand five hundred dollars (\$2,500), if the total
9 income from all sources derived from or attributable to this state
10 for the taxable year is five hundred thousand dollars (\$500,000)
11 or more, but less than one million dollars (\$1,000,000).

12 (3) Six thousand dollars (\$6,000), if the total income from all
13 sources derived from or attributable to this state for the taxable
14 year is one million dollars (\$1,000,000) or more, but less than five
15 million dollars (\$5,000,000).

16 (4) Eleven thousand seven hundred ninety dollars (\$11,790), if
17 the total income from all sources derived from or attributable to
18 this state for the taxable year is five million dollars (\$5,000,000)
19 or more.

20 (b) (1) (A) For purposes of this section, “total income from all
21 sources derived from or attributable to this state” means gross
22 income, as defined in Section 24271, plus the cost of goods sold
23 that are paid or incurred in connection with the trade or business
24 of the taxpayer. However, “total income from all sources derived
25 from or attributable to this state” shall not include allocation or
26 attribution of income or gain or distributions made to a limited
27 liability company in its capacity as a member of, or holder of an
28 economic interest in, another limited liability company if the
29 allocation or attribution of income or gain or distributions are
30 directly or indirectly attributable to income that is subject to the
31 payment of the fee described in this section.

32 (B) For purposes of this section, “total income from all sources
33 derived from or attributable to this state” shall be determined using
34 the rules for assigning sales under Sections 25135 and 25136 and
35 the regulations thereunder, as modified by regulations under
36 Section 25137, other than those provisions that exclude receipts
37 from the sales factor.

38 (2) In the event a taxpayer is a commonly controlled limited
39 liability company, the total income from all sources derived from
40 or attributable to this state, taking into account any election under

Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

(d) (1) *The fee imposed by this section shall be estimated and paid on or before the 15th day of the sixth month of the current taxable year.*

(2) *A penalty of 10 percent of the amount of any underpayment shall be added to the fee. The underpayment amount shall be equal to the difference between the total amount of the fee imposed by this section for the taxable year less the amount paid under paragraph (1) by the date specified in that paragraph. A penalty shall not be imposed with respect to any fee estimated and paid under this section if the amount paid by the date prescribed in this subdivision is equal to or greater than the total amount of the fee of the limited liability company for the preceding taxable year.*

SEC. 2. This act addresses the fiscal emergency declared by the Governor by proclamation on January 10, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

O